Re Sharma Kumari Shukla; ex p Dato' Abdullah Hishan bin Hj Mohd Hashim

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NO D2-29-3892 OF 1999
KAMALANATHAN RATNAM J
11 FEBRUARY 2000

Bankruptcy *— Notice — Setting aside — Set off in amount owed by judgment debtor — Judgment debtor claimed that judgment creditor's company owed her money — Set off neither equaled nor exceeded judgment debt — Whether sufficient to set aside bankruptcy notice*

Bankruptcy *— Notice — Name of judgment debtor — Does not correspond with name in identity card even though identity card number is the same — Affidavits affirmed by judgment debtor bore same address and identity card number — Whether bankruptcy notice invalidated — Bankruptcy Rules 1969 r 94(1)(aa)*

The respondent obtained a judgment of RM1,179,726.05 against the appellant (see *Dato' Abdullah Hishan bin Hj Mohd Hashim v Sharma Kumari Shukla (No 3)* [1999] 6 MLJ 589) and commenced bankruptcy proceedings against her. The appellant's application to strike out and/or set aside the bankruptcy notice was dismissed by the senior assistant registrar and the appellant appealed. The appellant contended that a set off occurred as a company, which the respondent was an executive director of and shareholder, owed the appellant RM30,000 as wages. It was also contended that the bankruptcy notice was bad in law as it had not stated the appellant's name as found in her identity card and that there was a non-compliance of r 94(1)(aa) of the Bankruptcy Rules 1969 ('the Rules'). However, the correctness of the identity card number as stated in the bankruptcy notice was not in dispute and two affidavits affirmed by the appellant bore the same address and identity card number as stated in the bankruptcy notice.

Held, dismissing the appeal:

(1) The set off raised by the appellant was against the company and not against the respondent. It is tried law that the respondent, as an executive director of a company and the company were separate entities. In any case, r 94(1)(b) of the Rules required that the court must be satisfied that the set off either equaled or exceeded the judgment debt. The set off claimed herein was RM30,000 which did not equal nor exceed the judgment debt (see p 433G–H).

(2) As long as the appellant had been properly identified as the person named in the National Registration Identity Card with the correct identity card number and as long as the appellant herself had affirmed an affidavit acknowledging the address, there is sufficient compliance with r 94(1)(aa) of the Bankruptcy Rules 1969. This is because r 94(1)(aa) merely required the name and the

National Registration Identity Card number of the debtor (see p 434G–H, E). During the course of the main trial, the appellant raised a similar issue and her counsel conceded that there was no dispute as to the names and that appellant was the defendant as named in the writ. By making such a concession through her counsel, the appellant was bound by such an admission and was estopped from raising the issue again (see p 435C–E).

[Bahasa Malaysia summary

Responden mendapat satu penghakiman berjumlah RM1,179,726.05 terhadap perayu (lihat *Dato' Abdullah Hishan bin Hj Mohd Hashim v Sharma Kumari Shukla (No 3)* [1999] 6 MLJ 589) dan memulakan prosiding kebangkrapan terhadap beliau. Permohonan perayu untuk membatalkan dan/atau mengetepikan notis kebangkrapan tersebut telah ditolak oleh penolong kanan pendaftar dan perayu telah membuat rayuan. Perayu menghujahkan bahawa satu tolakan telah berlaku sebagai satu syarikat, di mana responden merupakan pengarah eksekutif dan pemegang saham, mempunyai kewajipan terhadap perayu sebanyak RM30,000 sebagai gaji. Adalah juga dihujahkan bahawa notis kebangkrapan tersebut tidak betul di sisi undang-undang kerana ia tidak menyatakan nama perayu sebagai mana yang dinyatakan di dalam kad pengenalan beliau dan bahawa terdapat satu ketidakpatuhan k 94(1)(aa) Kaedah Kebangkrapan 1969 ('kaedah tersebut'). Namun begitu, ketepatan nombor kad pengenalan sebagai mana yang dinyatakan di dalam notis kebangkrapan tidak dipertikaikan dan dua afidavit oleh perayu mempunyai alamat dan nombor kad pengenalan yang sama sebagai mana yang dinyatakan di dalam notis kebangkrapan tersebut.

Diputuskan, menolak rayuan tersebut:

(1) Penolakan yang ditimbulkan oleh perayu adalah terhadap syarikat tersebut dan bukan terhadap responden. Adalah undang-undang lapuk bahawa responden sebagai pengarah eksekutif satu syarikat dan syarikat tersebut merupakan entiti berasingan. Dalam apa keadaan pun, k 94(1)(b) kaedah tersebut menghendaki mahkamah berpuas hati bahawa penolakan tersebut sama ada sama atau melebihi hutang penghakiman. Penolakan yang dituntut di sini adalah sebanyak RM30,000 yang tidak sama mahu pun melebihi hutang penghakiman tersebut (lihat ms 433G–H).

(2) Asalkan perayu telah diperkenalkan dengan betul sebagai orang yang dinamakan di dalam Kad Pengenalan Pendaftaran Negara dengan nombor kad pengenalan yang betul dan asalkan perayu sendiri telah mengesahkan satu afidavit yang mengakui alamat tersebut, maka terdapat pematuhan yang mencukupi dengan k 94(1)(aa) Kaedah Kebangkrapan 1969. Ini adalah kerana k 94(1)(aa) hanya menghendaki nama dan nombor

Kad Pengenalan Pendaftaran Negara penghutang (lihat ms 434G–H, E). Sepanjang tempoh perbicaraan utama berjalan, perayu telah menimbulkan satu isu yang sama dan peguam beliau telah mengaku bahawa tiada pertikaian tentang nama-nama tersebut dan perayu merupakan defendan yang dinamakan di dalam writ tersebut. Dengan membuat satu pemberian sedemikian melalui peguam beliau, perayu terikat oleh pengakuan tersebut dan diestopkan daripada menimbulkan isu itu lagi (lihat ms 435C–E).]

Notes

For cases on setting aside bankruptcy notice, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1766–1785.

Cases referred to

Dato' Abdullah Hishan bin Hj Mohd Hashim v Sharma Kumari Shukla (No 3) [1999] 6 MLJ 589 (refd)

Datuk Lim Kheng Kim v Malayan Banking Bhd [1993] 2 MLJ 298 (refd)

Legislation referred to

Bankruptcy Rules 1969 rr 94(1)(aa), (b), 95(2)

Roshan Kumar (*Ng Yook Woon, Andrew TC Saw & Co*) for the appellant/judgment debtor.

M Manoharan (*Karpal Singh & Co*) for the respondent/judgment creditor.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

This court had in an earlier suit entered judgment together with interest in the sum of RM1,179,726.05 against the judgment debtor (see *Dato' Abdullah Hishan bin Hj Mohd Hashim v Sharma Kumari Shukla (No 3)* [1999] 6 MLJ 589). Thereafter, the judgment creditor filed and served a bankruptcy notice upon the judgment debtor.

The applications

The judgment debtor then filed an application (encl 10) to strike off and/or set aside the bankruptcy notice with costs and for a further order that all further proceedings be stayed pending the outcome of the said application. At the same time, the judgment debtor also filed an affidavit (encl 6) pursuant to r 95 of the Bankruptcy Rules 1969 to set aside the bankruptcy notice. The learned senior assistant registrar heard both enclosures and

dismissed them with costs. Dissatisfied with the said decisions, the judgment debtor appealed. After hearing arguments, I dismissed both appeals with costs.

Findings of the court

At the outset, counsel for the judgment debtor, Mr Roshan Kumar, informed the court that since both the applications were for the same purpose, namely to strike out or to set aside the bankruptcy notice, he would take both together in his submission. For clarity, it is necessary to set out r 95 which reads as follows:

> Application to set aside
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> (1) The filing of an affidavit shall operate as an application to set aside the bankruptcy notice, and thereupon the Registrar shall fix a day for hearing the application, and shall give not less than three clear days' notice thereof to the debtor, the creditor and their respective solicitors, if known.
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> (2) If the application cannot be heard before the time specified in the notice for compliance with its requirements, the Registrar shall extend the time, and no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.

The r 95 challenge

The judgment debtor raised the issue of set off. She claimed that a company called Glamoir World of Sports Sdn Bhd, which had employed her, had owed her RM30,000 as wages. She also averred that the judgment creditor was the executive director and the main shareholder of the said company. In *Datuk Lim Kheng Kim v Malayan Banking Bhd* [1993] 2 MLJ 298, the then Supreme Court held that challenges to the creditor's petition or to the bankruptcy notice other than by way of a counterclaim, set off or cross demand which equals or exceeds the judgment debt must be made by filing a separate application supported by an affidavit. Whilst the approach taken by the judgment debtor in proceeding by way of a r 95 application is correct I have to consider whether the judgment debtor is correct in law in doing so. Firstly, it is trite law that an executive director of a company and the company are two separate entities. The set off raised by the judgment debtor is against Glamoir World of Sports Sdn Bhd and not against the judgment creditor. On this issue alone, this challenge must fail. In any case, to be able to even claim a set off, r 94(1)(b) requires that the court must be satisfied that the said set off either equals or exceeds the judgment debt. The set off claimed herein is a meagre RM30,000; neither does it equal nor exceed the judgment debt. On this issue too, the judgment debtor must fail. In the circumstances, pursuant to r 95(2) of the Bankruptcy Rules 1969, an act of bankruptcy is deemed to have been committed by the debtor.

Other challenges under encl 10

Mr Roshan Kumar for the judgment debtor argued that the bankruptcy notice was bad in law as it had not stated the debtor's name as found in her identity card and that there was therefore non-compliance with r 94(1)(aa).

The name as stated in the bankruptcy notice is Sharma Kumari Shukla (NRIC No 5932395). The name as stated in the identity card is Sharma Kumari a/p Oam Parkash (NRIC No 5932395). To ascertain the merit in this submission it is necessary to reproduce r 94 relating to the particulars that ought to be endorsed on the notice:

> Particulars to be endorsed on notice
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> (1) Every bankruptcy notice shall be endorsed with —
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> (a) the name and place of business of the solicitor who is suing out the notice, or if no solicitor is employed, with a memorandum that it is sued out by the creditor in person;
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> (aa) the name and National Registration Identity Card number of the debtor.
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> (b) an intimation to the debtor that if he has any counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt, and which he could not have set up in the action in which the judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar.
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> (2) In the case of a notice served in the Federation the time shall be seven days. In the case of a notice served elsewhere the Registrar when issuing the notice shall fix the time.

The judgment debtor argued that the judgment upon which the bankruptcy notice was founded was not entered in her official name as stated in her identity card. There is no dispute that the identity card number is stated correctly in the bankruptcy notice. I rejected this argument totally. Rule 94(1)(aa) merely requires the name and the National Registration Identity Card number of the debtor. If it was the intention of Parliament that the judgment debtor's submission is correct then it would have been so simple for the said rule to have read that the bankruptcy notice should have the National Registration Identity Card number and the name *as specified therein* (emphasis provided). Besides, the two affidavits affirmed by the judgment debtor bear the same address and identity card number as stated in the bankruptcy notice. It is my judgment that since the Bankruptcy Rules ought to be given a strict interpretation, it is not for this court to imply matters not specifically spelt out in the rules. I therefore hold that so long as the judgment debtor has been properly identified as the person named in the National Registration Identity Card with the correct identity card number and so long as the judgment debtor herself has affirmed an affidavit acknowledging the address, there is sufficient compliance with r 94(1)(aa) of the Bankruptcy Rules 1969.

There is one other matter that I must make mention of. In the course of the trial of the main suit leading to the incurring of this judgment debt, and which trial was heard by me for a period of over 30 days, the judgment debtor brought up this same issue, namely, that she was not the person named in the writ. The notes of evidence of the said proceedings have been exhibited by the judgment creditor in opposing this application. It is clear from the evidence of the judgment creditor that he had confirmed that both the names referred to the identity of the judgment debtor. The judgment

A debtor however never took the stand to deny or refute this evidence. Further Mr Gurbachan Singh, counsel for the judgment debtor in the civil proceedings, himself proceeded (see p 62 of my notes of proceedings) to question the judgment creditor on the identity of the defendant/judgment debtor in respect of her name. I then interjected to enquire if there was any dispute as to the identity of the defendant/judgment debtor and Sharma B Kumari Shukla. Mr Gurbachan Singh then made the concession that there was no difference. I reproduce verbatim what I recorded at p 62 of my notes of proceedings:

> At this stage, to a question from the court as to whether the name Sharma Kumari Shukla dan Sharma Kumari refer to one and the same person in court C hearing, Mr Gurbachan very kindly makes the concession that they are one and the same.

It is difficult to understand the judgment debtor. She was present in court when her counsel conceded that there was no dispute as to the names and that she was the defendant as named in the writ. And it is that same name D that is now referred to in the bankruptcy notice. How then can she affirm two affidavits, one to make a challenge under r 95 and the other in support of the application to strike off the bankruptcy notice and affirm in both affidavits that she is not the person properly named. To my mind, such conduct can be construed as an attempt to deceive the court or such conduct can be construed as an attempt to lull the judgment creditor to a E state of complacency by conceding at the trial that the names refer to the defendant/judgment debtor and thereby preventing him from seeking a ruling on that issue at the trial proper itself. I hold that by making such a concession through her counsel the judgment debtor is bound by such an admission and is clearly estopped from raising this issue again. If I accept F the judgment debtor's submission that the name as stated in the bankruptcy notice does not refer to the actual judgment debtor, then it would be tantamount to the judgment debtor saying: 'You take whatever judgment you want against me, but you can't take any form of execution against me.' Such cannot be the law. The majesty of justice that is symbolized by a blindfolded lady will be castigated as justice being blind. The wicked G machinations of scheming judgment debtors will derail and deride the successful judgment creditor's attempts to execute upon their judgments. No court must allow that, and so I shall not.

Appeal dismissed.

H Reported by Chin En Tek

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